

Senate Bill No. 1140

Passed the Senate August 11, 2008

Secretary of the Senate

Passed the Assembly July 14, 2008

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2008, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 15610.30 and 15657.5 of, and to add Sections 15657.6 and 15657.7 to, the Welfare and Institutions Code, relating to financial abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 1140, Steinberg. Financial abuse of elder or dependent adults.

(1) Under existing law, financial abuse of an elder or dependent adult occurs when a person or entity takes, secretes, appropriates, or retains, or assists in the taking, secreting, appropriating, or retaining, of real or personal property of an elder or dependent adult for a wrongful use or with the intent to defraud, or both.

Existing law makes the failure to report, or impeding or inhibiting a report of, among other things, financial abuse of an elder or dependent adult, in violation of certain reporting requirements a misdemeanor.

Existing law makes it a misdemeanor for any caretaker of an elder or a dependent adult to violate any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult.

This bill would, among other things, add to the definition of financial abuse the taking, secreting, appropriating, obtaining, or retaining, or assisting in the taking, secreting, appropriating, obtaining, or retaining, of real or personal property of an elder or dependent adult by undue influence, as defined. It would also make various conforming changes to these provisions.

By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law provides that where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, the court shall award the plaintiff all remedies provided by law and reasonable attorney's fees and costs.

Existing law requires that specified standards regarding the imposition of punitive damages on an employer based upon the act of an employee be satisfied before any damages or attorney's fees are awarded in a civil action for financial abuse.

The bill would eliminate the requirement that these standards be satisfied before compensatory damages and attorney’s fees and costs are awarded.

This bill would also provide that a person or entity that takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining the real or personal property of an elder or dependent adult when the elder or dependent adult lacks capacity, as defined, or is of unsound mind, as defined, but not entirely without understanding, shall, upon demand by the elder or dependent adult or his or her representative, return the property, and if that person or entity fails to return the property, the same remedies available when a defendant is liable for financial abuse shall be available.

(3) Existing law does not provide for a statute of limitations in which to commence a civil action for financial abuse of an elder or dependent adult.

This bill would provide for a 4-year statute of limitations in which to commence a civil action for financial abuse of an elder or dependent adult.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 15610.30 of the Welfare and Institutions Code is amended to read:

15610.30. (a) “Financial abuse” of an elder or dependent adult occurs when a person or entity does any of the following:

(1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.

(3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or

personal property of an elder or dependent adult by undue influence, as defined in Section 1575 of the Civil Code.

(b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.

(c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.

(d) For purposes of this section, “representative” means a person or entity that is either of the following:

(1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.

(2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

SEC. 2. Section 15657.5 of the Welfare and Institutions Code is amended to read:

15657.5. (a) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, in addition to compensatory damages and all other remedies otherwise provided by law, the court shall award to the plaintiff reasonable attorney’s fees and costs. The term “costs” includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

(b) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, and where it is proven by clear and convincing evidence that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse, in addition to reasonable attorney’s fees and costs set forth in subdivision (a), compensatory damages, and all other remedies otherwise provided by law, the limitations imposed by Section 377.34 of the Code of Civil Procedure on the damages recoverable shall not apply.

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any punitive damages may be imposed against an employer found liable for financial abuse as defined in Section 15610.30. This subdivision shall not apply to the recovery of compensatory damages or attorney's fees and costs.

(d) Nothing in this section affects the award of punitive damages under Section 3294 of the Civil Code.

SEC. 3. Section 15657.6 is added to the Welfare and Institutions Code, to read:

15657.6. A person or entity that takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining the real or personal property of an elder or dependent adult when the elder or dependent adult lacks capacity pursuant to Section 812 of the Probate Code, or is of unsound mind, but not entirely without understanding, pursuant to Section 39 of the Civil Code, shall, upon demand by the elder or dependent adult or a representative of the elder or dependent adult, as defined in subdivision (d) of Section 15610.30, return the property and if that person or entity fails to return the property, the elder or dependent adult shall be entitled to the remedies provided by Section 15657.5, including attorney's fees and costs. This section shall not apply to any agreement entered into by an elder or dependent adult when the elder or dependent adult had capacity.

SEC. 4. Section 15657.7 is added to the Welfare and Institutions Code, to read:

15657.7. An action for damages pursuant to Sections 15657.5 and 15657.6 for financial abuse of an elder or dependent adult, as defined in Section 15610.30, shall be commenced within four years after the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered, the facts constituting the financial abuse.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within

the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2008

Governor